IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1610 of 2006
With
SPECIAL CIVIL APPLICATION No. 1460 of 2006
With
SPECIAL CIVIL APPLICATION No. 1462 of 2006
With
SPECIAL CIVIL APPLICATION No. 1871 of 2006
With
SPECIAL CIVIL APPLICATION No. 1457 of 2006
With
SPECIAL CIVIL APPLICATION No. 1872 of 2006
With
SPECIAL CIVIL APPLICATION No. 2038 of 2006
To
SPECIAL CIVIL APPLICATION No. 2042 of 2006
With
SPECIAL CIVIL APPLICATION No. 2209 of 2006
With
SPECIAL CIVIL APPLICATION No. 2415 of 2006
With
SPECIAL CIVIL APPLICATION No. 4402 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

OUTDOOR ADVERTISING OWNERS ASSOCIATION,AHMEDABAD & 1 - Petitioner(s)
Versus
K.KAILASHNATHAN AND/OR SUCCESSOR TO THE OFFICE & 4 - Respondent(s)

==========

Appearance :
MR TS NANAVATI for Petitioner(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1 - 5.
MR RR MARSHALL for Respondent(s) : 1 - 4.
Mr. Dipen Desai, AGP for Respondent(s) : 5,
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 20/04/2006

ORAL JUDGMENT

As common question of law and facts arise in this group of petitions, they are being disposed of by this common judgment and order. The Special Civil Application No. 1610 of 2006 is treated as main matter.

2. Special Civil Application No. 1610 of 2006 is filed by Outdoor Advertising Owners' Association and rest of the Special Civil Applications are filed by individual members of the said Association who are in the business of outdoor advertising in the shape of placing of hoardings and signage in and around the city of Ahmedabad as well as within the area of AUDA. By way of these petitions under Article 226 of the Constitution of India, the respective petitioners have prayed for an appropriate writ, direction or

order declaring the action of the respondents No. 1 to 4 namely, AUDA and its Officers in indulging into demolition of hoardings of the members of the aforesaid Association and the respective petitioners as being bad in law, illegal, unconstitutional, arbitrary and consequently to restrain the respondents from indulging into any highhanded action of demolition of hoardings in AUDA are without following due process of law and without communication of order/notice pursuant to the order dated 28.10.2005 passed in Special Civil Application No. 20035 of 2005 and Special Civil Applications No. 22042 of 2005 to 22053 of 2005 [Coram: Mr. K.S. Jhaveri, J.].

3. The case of the petitioners, as narrated in the petitions, is as under;

The respective petitioners and the member of the petitioner Association of Special Civil Application No. 1610 of 2006 are engaged in the business of outdoor advertising in the shape of

placing of hoardings and signage in and around the city of Ahmedabad as well as within the AUDA. It is also their case that Regulations in respect of placing of hoardings in the marginal land were prohibited but subsequently in view of promulgation of amendments that came to be carried out from time to time and lastly understood to have been promulgated on and around 14.5.2005 which received substantial circulation by publication in newspaper whereby hoardings also came to be permitted within margin land or open spaces of plots. It is also the case of the petitioners that it came to be resolved that the licence charges for placement of hoardings on a road of width of less than 24 mtrs. is Rs. 200/- per sq.mtr. and Rs. 300/- per sq.mtr., for hoardings on a road of a width of more than 24 mtrs. By letter dated 11.9.2004 issued by the respondent authorities inter alia having resolved that the maximum height and length of hoardings in respect of those placed on a road of a width range between 18 mtrs., and less than 30 mtrs.,and above. That the relevant Regulations applicable for the purpose is Regulation

21 of the General Development Control Regulations, [hereinafter referred to as 'GDCR'] in relation to Control of Signs (Hoardings) And Outdoor Display Structures and Paging Tower And Telephone Tower and Outdoor Display Structures issued by the Government of Gujarat, Department of Urban Development and Urban Housing, upto date as on 15.4.2004. The respondents suddenly initiated a campaign with malafide intention and to take revenge by bringing down the hoardings lying in the margin areas of the private premises and the same was carried out without any notice or opportunity of hearing and without following principles of natural justice. The petitioners preferred representations dated 12th July 2005 and 21st July 2005 as according to the petitioners there was apparent incongruence between the norms with regard to hoardings placed within margin land and that placed by the AUDA itself on the road. That individual members of the Association also simultaneously applied for seeking licence in respect of advertisement hoardings board in margin lands of private property and in respect of each of such

firms a stipulated fee of Rs.300 towards inspection were also filled-up and duly paid. That the respondents have neither rejected the applications of the applicants nor given any opportunity of hearing nor issued any notice prior to taking any action, having continuously led the petitioners to believe that the respondent AUDA is seriously considering the representations of the said association of the petitioners. That on the other hand the authorities have without authority vested in law and in a highhanded illegal action, without issuance of any reasonable notice and an opportunity of hearing started to dismantle and bring down advertisement boards placed on margin lands of private property though the same was not encroachment on public road or public property and the same gave rise to filing of Special Civil Application No. 20035 of 2005, and ad-interim relief came to be granted restraining the respondents from taking any action without any due process of law. During the pendency of the aforesaid Special Civil Application, the respondent No.1 caused to issue chain of notices purportedly under Section

37 of the Gujarat Town Planning Act. The aforesaid Special Civil Application No. 20035 of 2005 with Special Civil Applications No. 22042 of 2005 to 22053 of 2005 came to be heard by the learned Single Judge of this Court and the aforesaid Special Civil Applications came to be disposed of as there was consensus between the parties, on the basis of which the following order came to be passed;

(i) The order passed by the AUDA which was subject matter in Special Civil Application No. 22042 of 2005 to 22053 of 2005 will be treated as notice;

(ii) However as regards reliefs for modification of T.P. Scheme which are claimed in Special Civil Application No. 20042 of 2005 and allied matters it will be open for the petitioners to make representation before the State Government for considering the proceedings initiated before AUDA;

(iii) The petitioners and/or representative on behalf of the petitioners shall approach the

respondent authority on 14th November 2005 between 11.00 AM to 5.00 PM with a representation for considering their case in accordance with law. On receipt of such representation/reply the respondent

authority shall consider the case of the petitioners in accordance with law as early as possible.

3.1. That a detailed notice/reply to the communication/order seeking further particulars dated 24.10.2005 was caused to be issued to the respondents but the same has not been responded and the petitioners apprehended that on completion of the period of 15 days the respondents would highhandedly and mechanically draw down the advertisements/ hoardings and therefore the petitioners have preferred the present Special Civil Applications for the aforesaid reliefs.

4. Shri TS Nanavati, learned advocate appearing on behalf of the respective petitioners, has submitted that the action of the respondents suffers

from non-application of mind inasmuch as there is no emergent necessity for demolition of the hoardings at a time when the respondents have themselves placed proposed amendments to the GDCR before the State Government and when the same are under active consideration at their end. It is further submitted by him that the impugned action is premature, inasmuch as in May 2005 after promulgation of the proposed amendment in GDCR the petitioners were called upon to bring the size of the hoardings and such size of the hoardings have been brought in line of size of proposed GDCR, while some hoardings have even been shifted to fall in length of the proposed GDCR, and fresh application for licence along with licence fees of the structure plan, plan certification as required by AUDA authorities had been represented, which till filing the petitions had neither been dealt with or rejected. It is submitted that earlier rejections of February 2005 are therefore of no avail as AUDA itself promulgated fresh norms. It is further submitted that the impugned action is also arbitrary and violative of

Article 14 of the Constitution of India inasmuch as the respondents have permitted placement of the hoardings on roof top near P & T Colony on between Shivranjini-Jodhpur Cross Road. It is further submitted that there is incongruity in placement of conditions having no nexus with the placement of the hoarding inasmuch as AUDA authorities have permitted placement of hoardings on road as can be seen on the 132 ft. Ring Road. It is further submitted that such hoardings are in fact placed on the road and not even on the foot path and are placed perpendicular to the road such as can cause some accident. While on the other hand, the conditions of putting the hoarding at a distance of 4.5 mtrs., in the building of the premises is itself baseless disparity. It is further submitted that a consolidated reading of 12.4.1 would read to mean that there is no absolute ban on placing of decorative advertisement boards, i.e., to mean hoardings on margin land and the authorities have wholly not applied their mind to this aspect while passing of the impugned order. It is further submitted that unlike any construction being put up

on the road which would endanger or cause hurdle in smooth movement of traffic, placement of the hoardings in the margin space is not likely to cause any dislocation or encroachment on foot path or traffic hazard etc. It is submitted that the main Special Civil Application, which is a substantive petition preferred at the stage when the petitioners/members of the association apprehended that without communication of orders the respondent-AUDA is likely to demolish their hoardings. It is submitted that so far as other Special Civil Applications, being Special Civil Application No. 1457 of 2006 and other allied matters by individual petitioners are concerned, the same are challenging the impugned action of the respondent authorities in passing of the individual orders pursuant to the order dated 28.10.2005 passed by this Court. The sum and substance of the arguments/submissions made on behalf of the petitioners can be summarised as under;

(i) That pending the proposed amendment/variation/modification of GDCR and when the

same is under active consideration by the State Government, any action on the part of the AUDA is premature and unwarranted;

(ii) There is no nexus and/or reasonableness in directing not to put up the hoardings on the roof and/or in the margin land;

(iii) The AUDA itself has permitted the hoardings on the road/foot-path and therefore the restriction/ban of construction and/or putting up of the hoardings on the roof of private building and on margin land is discriminatory and violative of Article 14 of the Constitution of India;

(iv) The decision of the respondent authority is malafide as earlier some of the members have preferred Special Civil Applications before this Court challenging the action of the AUDA with regard to awarding contract for the hoardings the respondents are taking the action.

4,1. It is required to be noted that the petitioners have submitted Written Submissions and while submitting the Written Submissions along with some documents, the petitioners have tried to make out a new case which is not there in the main Special Civil Application and have relied upon those documents which are not part of the main Special Civil Application, and therefore this Court has considered only those submissions made in the Written Submissions and those documents which are part of the pleadings of the main Special Civil Application, as without giving any opportunity to the respondents to meet with those pleadings and the documents which are not part of the main Special Civil Applications, it will not be proper on the part of this Court to consider those documents and the new pleadings. Thus, by making the aforesaid submissions the petitioners have requested to allow the present Special Civil Applications and grant the relief as prayed for.

5. In response to the notice of this Court, Shri RR Marshall, learned advocate appears on behalf of AUDA. An affidavit-in-reply is also filed on behalf of AUDA. While relying upon the Written Argument as well as Affidavit-in-Reply, Shri Marshall has submitted that AUDA's GDCR have been sanctioned by the Government of Gujarat and hence have become part of the Act. The said GDCR deals with signs/hoardings. Clause 21.1. contemplates that only authorised signs can be put up. Clause 21.4(10) clearly states that no hoardings shall be permitted in open margin of the building and Clause 21.5 talks of the restriction of the hoardings on roofs. It is also further submitted by him that most of the petitioners applied for permission to put up hoardings in margin lands and their applications were rejected on different dates, and so far as remaining are concerned, they have not bothered to even apply for permission. It is submitted that in view of the fact that the hoardings in question which are in margin lands are put up either without asking for permission or after permission is rejected and the

said action of the petitioners is absolutely illegal inasmuch as only authorised signs/hoardings can be permitted. It is further submitted that without prejudice to the above submissions, even as per Clause 21.4(10), no hoarding shall be permitted in the margin space of the building. It is submitted that all the present hoardings are in the margin space of the building and hence are contrary to GDCR, i.e., they are contrary to the Act and law. It is submitted that hoardings are not only illegal because they are in margin lands which is prohibited but they are also illegal as they have been put up without obtaining permission from the authority without complying with requirement of GDCR. Meeting with the contention on behalf of the petitioners that as the AUDA has forwarded its recommendation to the State Government for modification of GDCR the AUDA should not take any action, he has submitted that a recommendation is a recommendation till it is accepted by the Government, and it has no force of law, whereas unamended GDCR prohibiting placing of hoardings in margin land has become part of the Act

and law of the land and in that view of the matter the petitioners cannot illegally put up boardings merely by submitting that AUDA has proposed the changes. It is submitted that till the proposed change is accepted and GDCR is amended, the action of the petitioners is absolutely illegal and contrary to law, and to permit them to continue by an order of this Hon'ble Court would be to permit a citizen to violate the law under order of the Court which cannot be permitted.

6. It is also further submitted that proposal of AUDA is not absolute and relying upon Page 109 of the compilation, it is submitted that the proposal clearly shows as to what is the nature of the hoardings that can be put up in the margin provided the proposal is accepted. He further submitted that even the hoardings put up by the petitioners are contrary even to the guidelines and the proposal. It is further submitted by him that the petitioners' action is illegal as the placing of the hoardings in the margin lands without permission is contrary to

GDCR and is contrary to the Act, and that there is no equity attached to the petitioners' case as even hoardings have been put up in a highhanded manner without obtaining permission and flouting the GDCR as if the law does not exist and as the Outdoor Advertising Owners' Association and their boards are free to do all it pleases without obeying the law and respecting the same. It is, therefore, requested to dismiss all the present Special Civil Applications.

7. The sum and substance of the submissions made on behalf of the respondent AUDA can be summarised as under;

(i) That as per GDCR, more particularly Clause 24.4(10), no hoarding shall be permitted in the open margin of the building and Clause 21.5 talks of the restriction of the hoardings on roofs;

(ii) All the hoardings in question are in the margin space of the building and are hence contrary to the GDCR and contrary to the Act and law;

(iii) As per the GDCR, a person can put up and/or have the hoarding/s only after obtaining permission from the authority, and none of the petitioners is having any permission, and without obtaining any permission from the authority they have put up the hoardings. In case of most of the petitioners, permissions have been refused and remaining petitioners have even not cared to obtain the permission;

(iv) Merely because the proposal is forwarded for modification of the GDCR, it is no ground not to take any action, as so long as the proposal is accepted the unamended GDCR is in existence and nobody can be permitted to place the hoardings contrary to existing GDCR unless it is modified and/or varied as per the proposal;

(v) Even the present hoardings are also contrary to the guidelines and the proposal.

8. Heard the learned advocates appearing on behalf of the parties. The short question which is required to be considered by this Court is whether the petitioners and/or any member of the petitioner can be permitted to put up hoardings in margin lands and/or on the roof contrary to GDCR and/or whether the petitioners can be permitted to put up hoardings in margin lands and/or roof pending proposal for amendment in the GDCR contrary to the existing GDCR and/or whether the petitioners and/or their members can be permitted to put up hoardings in margin lands and/or in the roof contrary to the GDCR merely because the AUDA might have permitted at some other places and/or the AUDA has permitted to put up hoardings on the footpath and/or on the road as alleged.

9. It is not in dispute that there are General Development Contrary Regulations (GDCRs) in existence and implemented within the AUDA limit and the said GDCRs which are framed vide Notification dated 18th May 2002 have been sanctioned by the Government of Gujarat under sub-clause (ii) of Clause (a) of sub-

section (1) of Section 17 of the Gujarat Town Planning Act and the same are published in the Official Gazette vide Corrigendum Notification dated 8th October 2002, Notification dated 20th February 2004 and Corrigendum dated 15th April 2004. As per Regulation No. 21.1., only authorised Signs, Hoarding, Paging Tower and Telephone Towers are permitted and even authorised signs/hoardings are permitted as per the conditions and requirements under Regulations 21.2, 21.3, 21.4, 21.5, 21.6, 21.7 and 21.8. Regulation 21 reads as under;

> 21.1 PERMISSION
>
> Only authorised signs (Hoarding) paging tower and telephone towers will be permitted.
>
> 21.2 DESIGN AND SIZE
>
> Every hoarding shall be designed so as to withstand the wind, dead, seismic and other loads and other structural requirements in accordance with the NBC.

In the case of shopping units in commercial areas and/or residential-cum-commercial buildings, the display boards shall be at the same height above the shopping arcade and shall ordinarily be 45.5 cms. To 61 cms. in height. The placement and size of the boards shall form a part of the building permission and no change therein shall be permitted nor shall any additional boards be allowed to be displayed.

Size of the boarding along the various roads shall be permitted as prescribed by appropriate authority. The appropriate authority shall prescribe size of the hoarding according to local conditions and requirements with prior intimation to state government.

21.3 PROHIBITED SIGNS

The following signs are prohibited along major roads, having width beyond 18.00 Mts.

a) Any sign that by reason of its shapes, position or colour may be confused with an authorised traffic sign or signal.

b) Any sign containing the word “Stop”, “Look”, “Danger” or other similar word

that might mislead or confuse the travellers.

c) Any sign that is attached to or printed on a rock or other natural objects and

d) Any sign that is located within a public right-of-way unless it is an official street name, traffic sign or signal or other official sign.

21.4 GENERAL RESTRICTIONS

1) No ground sign shall be erected to a height according to local condition and requirements. Lighting, reflections may extend beyond the top of face of the sign.

2) Every ground sign shall firmly supported and anchored to the ground. Supports and anchors shall be of treated timber in accordance with good

practice or metal treated for corrosion resistance or masonry or concrete.

3) No ground sign shall be erected so as to obstruct from access to or egress

from any building and;

4) No ground sign shall be set nearer to the street line than the established building line.

5) Distance from the junction of road:- No sign or hoarding along roads shall be permitted. In such a way that it is not obstructing the vision required for safe traffic movement.

6) Any hoarding which in the opinion of the Authority is likely to be confused with unauthorised traffic sign or signal shall not be permitted.

7) No hoarding on road less than 10 Mts. vide shall be permitted in existing Walled City and Gamtal provided existing hording on Gandhi Road and Relief Road shall be allowed.

8) Any hoarding containing the words “Stop”, “Look”, “Danger” or other similar words that might mislead or confuse the travellers shall not be permitted.

9) No hoarding shall be permitted after keeping distance, according to local condition and requirements from any public park.

10) No hoarding shall be permitted in the open margin space of the building.

11) All permission for hording shall be given only after getting certificate from registered structural engineer for the stability, safety of hording to be erected.

21.5 HOARDING ON ROOF

Following provisions shall apply for Roof Signs.

a) Location: No roof sign shall be placed on or over the roof of any building, unless the entire roof construction is of non-combustible material. The top of sign board should confirm the building height regulations.

b) Projection: No roof sign shall project beyond the existing building line of the building on which it is erected or

shall extend beyond the roof in any direction.

c) Support & Anchorage: Every roof sign shall be thoroughly secured and anchored to the building on or over which it is erected. All loads shall be safely distributed to the structural members of the building.

21.6. WALL SIGNS

Following provisions shall apply for wall signs.

a) Dimensions: The total area of the sign shall not exceed 25 percent of the total area of the facade on which the sign is erected. The facade of the building shall be subdivided into blocks of uniform height and the area of the sign erected on particular block shall not exceed 25 percent of the area of that block.

b) Projection:No wall sign shall extend above the top of the wall or beyond the ends of the wall to which it is

attached. At any place where pedestrians may pass along a wall, any wall sign attached thereto shall not project more than 7.5 cms. there from within a height of 2.5 Mts. Measured from the level of such place.

c) Support & Attachment: Every wall sign shall be securely attached to walls, wooden blocks or anchorage with wood used in connection with screws, staples or nails shall not be considered proper anchorage, except in the case of wall signs attached to walls of wood.

d) Reflectors: Lighting reflectors may project 2.4 Mts. beyond the face of the wall provided such reflectors are at least 4m above the footpath level, but in no case shall such reflectors project beyond a vertical plane one meter inside the kerb line.

21.7 PROJECTING SIGNS

No projecting sign or any part of its supports or frame work shall project more than 2 meters beyond the main face of the building to which such sign is attached. At

every place where pedestrians may pass underneath a projecting sign, an over-head clearance of at least 2.5 Mts. shall be maintained.

Comprehensive Sign Design: Particularly in the case of an existing structure where because of the code amendment new signage is likely to cover less of the building facade than previously, it is hoped that Comprehensive Sign Designs will encourage the rehabilitation of the building front itself as well as the careful design of the sign that goes on it.

21.8 SIGNS IN URBAN RENEWAL PROJECT AREAS

These signs must confirm with the zoning regulations and with the urban renewal plan or special restrictions for the area, which may include additional regulations or requirements.

21.8.1 BANNERS, SIGN-BOARDS ETC:

Banners, signboards and several other kinds of signs other than on-premise signs shall be only temporarily permitted.

21.8.2 No signs within 30 Mts. Distance of a park entrances or institutional entrances shall be permitted.

21.9. HISTORIC BUILDINGS

The Competent Authority is empowered to deny the permission on the ground of ambiance of heritage buildings and precincts.

21.10. DEPOSIT AND FEES

(1) The fees for erection and maintenance of the hoarding shall be charged as decided by Competent Authority from time to time.

(2) The fees for hoarding shall be paid by the applicant in advance, for the calendar year or part thereof.

21.11 TELECOMMUNICATION INFRASTRUCTURE (PAGING, CELLULAR MOBILES, 'V' SAT., MTN. ETC.)

1) Following provisions shall apply for telecommunication infrastrcture.

a) Location: The Telecommunication Infrastructure shall be either placed

on the building roof tops or on the ground or open space within the premises subject to other regulations.

b) Type of structure:

(i) Steel fabricated tower or antennae's on M.S. Pole.

(ii) Pre-fabricated shelters of fibre glass or P.V.C..on the building roof top/terrace for equipment.

(iii) Masonry Structure/Shelter on the ground for equipment.

(iv) D.G. Set with sound proof cover to reduce the noise level.

c) Requirement:

(i) Every applicant has to obtain/procure the necessary permission from the “Standing Advisory Committee on Radio Frequency Allocation” (SACFA) issued by Ministry of Telecommunications.

(ii) Every applicant will have to produce the structural stability certificate

from the registered structural

engineer which shall be the liability of both parties.

(iii) Applicant have to produce/submit plans of the structure to be erected.

d) Projection: No Pager and/or Telephone Tower shall project beyond the existing building line of the building on which it is erected in any direction.

2) DEPOSIT AND FEES: The fees for erection and maintenance of the hoarding shall be charged as decided by Competent Authority from time to time.

9.1. Thus, as per the sanctioned GDCRs, more particularly Regulation No. 21, only authorised hoardings/signs are permitted which are authorised by the authority and that too on complying with other requirements which are stated hereinabove. As per Regulation No. 21.4(10), no hoardings shall be permitted in the open margin space of the building and for the purpose of hoarding on roof-tops, the

requirements and restrictions are as mentioned in Regular No. 21.5. So far as present Special Civil Applications are concerned, they are mainly related to placement of hoardings/sign boards in the open margin space of the building. There is nothing on record to show that any of the petitioners is having any permission to put up hoardings/signs and/or they are authorised by the authority. On the contrary, as mentioned in the affidavit-in-reply on behalf of AUDA, so far as most of the petitioners are concerned, their applications are already rejected, and, with regard to the rest, even no application was submitted. The relevant particulars are at Pages No. 96 to 107 of the compilation, i.e., along with Affidavit-in-Reply on behalf of AUDA. Thus, none of the petitioners has complied with even the first condition as envisaged under Regulation 21.1.

10. The main submission on behalf of the petitioners is that the very authority, i.e., AUDA has proposed amendment in the GDCRs and therefore during pendency of the proposal with the State

Government they may be permitted to continue with the hoardings/signs in the margin land. It is also the submission on behalf of the petitioners that in fact they have modified and/or changed their signs in line with the proposed amendment which is disputed by the respondent authority. It is submitted that even none of the petitioners is in fact having any signs/hoardings even as per the proposed amended Regulations. Merely because some of amendment proposed, it is not that the petitioners are not required to comply with the requirements as per the existing GDCRs. So long as as the amendment is not accepted by the State Government and the Regulations are not amended, the Regulations continue to be in existence and the petitioners and/or any other person/s are bound to comply with the requirements of the existing GDCRs. As stated above, and as per Regulation No. 25.4(10), no hoarding is permitted in the open margin space of a building and therefore allowing the petitioners to continue with the hoardings in the open margin space of the buildings will tantamount to allowing the petitioners to

violate the existing GDCRs which GDCRs are part of the provisions of Gujarat Town Planning Act, and the same cannot be permitted. So long as the present GDCRs continue to remain in operation, the petitioners are bound to act according to the same and comply with the existing GDCRs. Under the circumstances, the prayer of the petitioners, to continue with the signs/hoardings without any authorization by the competent authority and dehors the existing GDCRs, cannot be granted.

11. It is also the contention on behalf of the petitioners that even the AUDA itself has permitted to put up the signs/hoardings in the margin land and/or on the roof-tops at some places and/or the AUDA has permitted for placing signs or hoardings on the footpath or on the public road on 132 ft.road and therefore they may also be permitted to put up signs/hoardings in the open margin space of the private building as the same will not cause any hindrance to the traffic. At this stage, a reference is required to be made to the decisions of the

Hon'ble Supreme Court in the case of ***Union of India and Another Vs. International Trading Co.and Another,*** reported in *2003(5) SCC Page 437*; as well as in the case of ***Yogesh Kumar and Others vs. Govt.of NCT. Delhi and Others*** reported in *2003(3) SCC Page 548,* wherein the Hon'ble Supreme Court has held that there cannot be a negative discrimination and order passed in favour of one person if it is found that it is a wrong order another person cannot claim parity and that wrong order in favour of one person cannot entitled other person to get the same order. Therefore, merely because and for the sake of arguments, even if it is accepted that AUDA might have permitted some person to put up the hoardings/signs dehors the GDCRs, that will not entitle the petitioners to flout the law and/or act contrary to the GDCRs. The petitioners, therefore, cannot be permitted to violate the law. In fact, it is denied by the AUDA that they have permitted other persons to put up the sign boards/hoardings contrary to the GDCRs. In fact, Shri Marshall, learned advocate appearing on behalf of AUD has made a

categorical statement under instruction from the officer of the AUDA that if any hoarding or signs are found to have been installed dehors the existing GDCRs and/or if it is brought to the notice of the AUDA about installation of such hoarding/signs, in that case the authorities will see to it that they are removed and nobody will be permitted to put up the hoardings/signs contrary to GDCRs.

12. It is the contention on behalf of the petitioners that when the petitioners have put up hoardings/signs in the open margin space in the private building, the restriction in the GDCRs that no hoarding shall be permitted in the open margin space of the building is unreasonable and arbitrary. It is required to be noted that, none of the petitioners has challenged the GDCRs. The GDCRs are sanctioned by the State Government under Section 17 of the Gujarat Town Planning Act and in fact they are part of the Gujarat Town Planning Act. Therefore,in absence of any challenge to the GDCRs which have become part of the said Act, the

contention/submission on behalf of the petitioner, that it is arbitrary and unreasonable, cannot be accepted and/or the same is not required to be considered more particularly when the GDCRs are in existence.

13. So far as the contention on behalf of the petitioners, that the action of the respondent authority is malafide as earlier the Association and/or some of the members of the Association had preferred Special Civil Application challenging the action of the authority in awarding contract for putting up hoardings/signs, is concerned, it is required to be noted that the authority concerned by the impugned action want to see that the GDCRs are implemented in letter and spirit and the same are complied with. The action of the respondents is not dehors the law. Merely because earlier, some litigation was resorted to by some of the petitioners and thereafter some action is taken by the authority either to implement the law and/or some action is

taken in consonance with the provisions of the GDCRs, it cannot be said that the subsequent action of the respondent authority to direct the petitioners to implement the law, which is in the present case, the GDCRs, is malafide.

14. It is required to be noted that in the present case, the decision has been taken after giving opportunity to the competent authority in consonance with the order passed by the learned Single Judge of this Court and the petitioners are directed to remove the hoardings/signs which are contrary to the GDCRs, as none of the petitioners is having any authorization by the competent authority. Under the GDCRs, more particularly Regulation No. 21.4(10), no sign board is permitted in the open margin space of a building. As stated above, the main submission on behalf of the petitioners is that the AUDA has proposed the amendment and therefore they should be permitted to continue with the hoardings/signs. At one point of time, it was suggested that let the hoardings be there, but they

may not exhibit any advertisement so that if in future if there is any amendment in the GDCRs they may not have to incur any further expenses. However, the learned advocate appearing on behalf of the petitioners has insisted that they may be permitted to have the signs/hoardings in the open margin space of building/s and also to exhibit advertisements during pendency of proposal with the State Government. Such prayer of the petitioners cannot be accepted. Allowing the petitioners to put up and/or continue with the hoardings/signs in the open margin space will be allowing the petitioners to act contrary to the law/GDCRs and this Court cannot permit the petitioners to violate the law and/or continue the violation of the law/GDCRs.

15. For the reasons stated above, and considering the fact that none of the petitioners is having authorization to put up signs/hoardings, and in view of the fact that as per the existing GDCRs the hoardings/signs in the open margin space is not permitted and the same is banned, none of the prayers

of the petitioners can be granted. Under the circumstances, all the present Special Civil Applications are required to be dismissed and are accordingly dismissed. Notice is discharged. Ad-interim relief stands vacated forthwith.

At this stage, Shri TS Nanavati, learned advocate appearing on behalf of the petitioners, has requested to continue the ad-interim relief. However, for the reasons stated above, continuance of interim relief would tantamount to permitting the petitioners to continue with the hoardings/signs in the open margin space contrary to the sanctioned existing GDCRs and therefore the prayer on behalf of the petitioners to continue the ad-interim relief any longer is rejected.

[M.R. Shah, J.]

rmr.